

Dennis Nettiksimmons
Ryan Browne
HEDGER FRIEND, P.L.L.C.
2800 Central Avenue, Suite C
Billings, Montana 59102
(406) 896-4100
(406) 896-4199 - facsimile

Attorneys for BNSF Railway Company,

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

DEAN STACY, NORMA STACY, } Cause No.
**DONALD STACY, STEVE }
CARVEY, ANTHONY STACY, }
Plaintiffs, }
vs. }
**BNSF RAILWAY COMPANY, a } DEFENDANT'S PETITION AND
Delaware corporation, } NOTICE OF REMOVAL
Defendant. }****

Defendant, BNSF Railway Company ("BNSF"), by and through its attorneys, and, pursuant to 28 U.S.C. §§ 1441 and 1446(a), hereby gives notice of removal of the above-captioned action, pending as Cause No. DV-13-89 in

Nineteenth Judicial District Court, Lincoln County (the “State Court Action”), to the United States District Court for the District of Montana, Missoula Division.

BNSF removes this case on the basis of the Court’s original jurisdiction over civil actions, 28 U.S.C. § 1332(a)(1), where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

In support of such petition, BNSF states as follows:

1. On April 19, 2013, Plaintiffs served on Defendant a copy of a Summons and Complaint filed in Montana’s Nineteenth Judicial District Court, Lincoln County. A copy of Plaintiff’s Complaint and Summons is attached hereto at Exhibit “A”.

2. This Notice of Removal is timely filed. 28 U.S.C. § 1446 provides that a removal notice must be filed within 30 days of receipt of the initial pleading. The 30-day removal period under 28 U.S.C. § 1446 does not commence until proper service of the summons and complaint under applicable state law. *See Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344 (1999). Under Montana law, Rule 4(i)(3), M.R.Civ.P., Defendant was served on April 19, 2013. This Notice of Removal is, therefore, timely filed under 28 U.S.C. § 1446(b).

3. Plaintiffs were residents and citizens of Montana at the time the State Court Action was filed.

4. Defendant was a Delaware corporation with its principal place of business in Fort Worth, Texas, at the time the State Court Action was filed; therefore, BNSF was a citizen of Delaware and Texas when the State Court Action was filed.

5. Plaintiffs requested “[c]ompensation in the amount of 1.5 million dollars” in their Complaint. *See Exhibit “A”.*

6. Complete diversity of citizenship of the parties exists. This case is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441, in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Thus, this action is removable on the basis of diversity jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1446.

7. Promptly upon filing, Defendant will give written notice of the filing of this Petition and Notice to Plaintiffs, and it will file a copy with the Clerk of the State Court pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Defendant, BNSF notifies you that Cause No. DV-13-89, formerly pending in the Montana Nineteenth Judicial District Court, Lincoln County, Montana, has been removed to the United States District Court for Montana.

DATED this 2nd day of May, 2013.

HEDGER FRIEND, PLLC

By: /s/ Ryan Browne

Dennis Nettiksimmons
Ryan Browne
Attorneys for BNSF Railway Company

CERTIFICATE OF COMPLIANCE

I certify that pursuant to L.R. 7.1(d)(2) the attached brief is proportionately spaced, has a typeface of 14 points, and contains 499 words.

/s/ Ryan Browne

CERTIFICATE OF SERVICE

I, the undersigned, a representative of the law firm of Hedger Friend, PLLC hereby certify that I served a true and complete copy of the foregoing **“Defendant’s Petition and Notice of Removal”** on the following persons by the following means:

1, 2 CM/ECF
 Hand Delivery
2 Mail
 Overnight Delivery Service
 Fax
 E-Mail

1. Clerk, U.S. District Court
2. Dean Stacy
P.O. Box 467
Eureka, MT 59917

DATE: 05/02/13

/s/ Ryan Browne